

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of L. R. O. WATTS, Minor.

UNPUBLISHED
December 19, 2013

No. 316958
Wayne Circuit Court
Family Division
LC No. 13-511551-NA

Before: JANSEN, P.J., and O'CONNELL and M. J. KELLY, JJ.

PER CURIAM.

Respondent father appeals of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j).¹ Because we conclude that there were no errors warranting relief, we affirm.

Respondent first argues that the trial court violated his right to due process and denied him a fair trial by failing to hold a bifurcated hearing. Respondent contends that the trial court erred when it used his plea both to establish the court's jurisdiction over the child and to establish the statutory grounds for termination without affording him the opportunity to present evidence to contest the statutory grounds for jurisdiction. A trial court acquires jurisdiction over a child when the factfinder determines by a preponderance of the evidence that the allegations in the petition establish that the child comes within the statutory requirements of MCL 712A.2(b). See *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993); MCR 3.972(C)(1). Generally, the determination whether the allegations in the petition are true, thus allowing the court to exercise jurisdiction, is made from the respondent's admissions to the allegations in the petition, or from other evidence if the respondent pleads no contest, or from evidence introduced at a trial if the respondent contests jurisdiction. *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001); MCR 3.971(C)(2); MCR 3.972.

¹ The trial court cited these grounds in the termination order, but also cited § 19b(3)(k)(iii) orally on the record. Because a court speaks through its written orders and judgments, not through its oral pronouncements, we shall limit our analysis to the grounds stated in the written order. *Hall v Fortino*, 158 Mich App 663, 667; 405 NW2d 106 (1986).

Once the trial court has jurisdiction, it must hold a dispositional hearing “to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that one or more of the statutory grounds alleged in the petition are true.” MCR 3.973(A). Among other things, the court may make the child a temporary ward and have the parents participate in services to facilitate reunification or it may terminate parental rights. MCR 3.973(F); MCR 3.977(E). This Court has stressed that both an adjudicative hearing and a dispositional hearing must be held, even when termination is sought at the initial dispositional hearing, but the trial court may hold the dispositional hearing immediately following the adjudicative hearing. *In re AMAC*, 269 Mich App 533, 538; 711 NW2d 426 (2006).

When termination is requested at the initial dispositional hearing, the trial court conducts only two hearings: the adjudication and the disposition. The adjudication determines whether the child comes under the court’s jurisdiction as provided under MCL 712A.2(b). The trial court does not then hold two more hearings, one to determine whether the statutory grounds for termination have been established and one to determine whether termination is in the child’s best interests. Rather, the court holds a single dispositional hearing. At the latter hearing, it determines whether a statutory ground for termination has been established, which determination can be based on evidence introduced at the adjudicative hearing or on evidence introduced at the dispositional hearing, and then determines whether termination is in the child’s best interests. MCR 3.977(E)(3) and (4). The trial court followed that procedure in this case. The parties agreed that the parents’ pleas would establish a basis for jurisdiction only and the trial court then held a dispositional hearing to determine whether there was a statutory ground for termination and whether termination was in the child’s best interests.² Accordingly, there was no error.

Next, the trial court did not clearly err in finding that the statutory grounds for termination had been established by clear and convincing legally admissible evidence. MCL 712A.19b(3); MCR 3.977(E)(3). The evidence showed that the six-week-old infant presented at the hospital with multiple healing bone fractures as well as a fresh bone fracture and bruising. The new bone fracture was inconsistent with accidental injury. The child had been in the care of her parents before her admission to the hospital, and respondent did not seek medical attention for the child, who was in obvious distress. The evidence that the injury was not accidental and that respondent failed to seek medical attention permits an inference that the multiple prior bone fractures were also not accidental. Both parents denied inflicting the injuries and claimed not to know who was responsible. But this Court has held that where an infant suffers “unexplained, serious, nonaccidental injuries consistent with intentional abuse” while in the sole custody of her

² The trial court referred to various statutory grounds for termination when it initially exercised jurisdiction over the child. But it later indicated that it had misspoken and clarified that it had only found that the child had been physically abused for purposes of jurisdiction and that it would hold a separate hearing to determine the child’s disposition. And, consistent with the procedural requirements, the trial court made its findings on the statutory grounds for termination after the dispositional hearing.

parents, it does not matter that the perpetrator cannot be identified because one of them must have perpetrated the abuse and one of them must have failed to protect the child from the abuse. See *In re Ellis*, 294 Mich App 30, 35; 817 NW2d 111 (2011) (“We conclude that the trial court properly determined that at least one of them had perpetrated the abuse and at least one of them had failed to prevent it; consequently, it did not matter which did which.”); *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (“[W]e hold that termination of parental rights under MCL 712A.19b[3][j] and MCL 712A.19b[3][g] is permissible even in the absence of determinative evidence regarding the identity of the perpetrator when the evidence shows that the respondents must have either caused the intentional injuries or failed to safeguard the children from injury.”). In addition, because the evidence clearly established that the parents either inflicted severe physical abuse or failed to protect the child from such abuse, petitioner was not required to provide reunification services before proceeding to termination. MCL 712A.19a(2)(a); MCL 722.638(1)(a)(iii) and (2). For that reason, respondent cannot rely on *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991).

The trial court also did not clearly err in finding that termination of respondent’s parental rights was in the child’s best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). Despite the evidence that the child had suffered repeated, serious, and non-accidental injuries while in the parents’ exclusive care, both parents claimed not to know what happened to the child; there was also evidence that respondent intended to remain in a relationship with the child’s mother. This evidence permitted an inference that the abusive conditions would remain unchanged if the child were returned to respondent’s care. In contrast, there was evidence that the child was thriving in foster care and had not suffered any additional injuries since being removed from the parents’ custody. These factors support the trial court’s best-interests decision. *In re VanDalen*, 293 Mich App at 142. Further, the trial court properly considered the fact that the child had been placed with a relative. See *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). The court rejected respondent’s suggestion of a guardianship with the relative caretaker in lieu of termination because it found that eliminating all contact between the parents and the child was the only way to assure the child’s safety. The trial court did not clearly err in its evaluation of the child’s best interests.

There were no errors warranting relief.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Kelly